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February 22, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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**Re: Sprint PCS Petition for Waiver of the Eligibility Requirements Set
Forth in Rule 24.709(a) for the PCS Frequency Blocks C and F
Auction to Begin on July 26, 2000**

Dear Ms. Salas:

Sprint Spectrum L.P. d/b/a Sprint PCS hereby submits an original and four (4) copies of the above-referenced waiver request.

Please contact the undersigned with any questions.

Sincerely,

Roger C. Sherman

Enclosure

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)

Sprint Spectrum L.P.)

Request for Waiver of the Eligibility Requirements)
Set Forth in Rule 24.709(a) for the PCS Frequency)
Blocks C and F Auction to Begin on July 26, 2000)
_____)

DA 00-_____

SPRINT PCS PETITION FOR WAIVER

Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS") hereby petitions the Commission for a waiver of Section 24.709(a) of the Commission's rules so that it can participate in the C and F block auction scheduled to begin on July 26, 2000.¹ Sprint PCS seeks this waiver only if the Commission decides to grant the same waiver to SBC, Nextel, or any other entity that is precluded by Section 24.709(a) from participating in this auction.

Sprint PCS questions whether the Commission may lawfully grant a waiver of Section 24.709(a) to any firm that is not an "entrepreneur" (a firm with annual revenues less than \$125 million and assets of less than \$500 million).² Nevertheless, if the Commission does decide to grant a waiver to SBC, Nextel, or any other entity, Sprint PCS seeks an identical waiver. Like SBC and Nextel, Sprint PCS is highly experienced

¹ See 47 C.F.R. § 24.709(a). See also *Public Notice*, "Auction of C and F Block Broadband PCS Licenses; Notice of Auction Scheduled for July 26, 2000," DA 00-49 (Jan. 12, 2000).

² See Sprint PCS Comments, DA 00-191 (Feb. 22, 2000).

in building and managing CMRS systems throughout the nation.³ In addition, Sprint PCS has the resources to utilize rapidly and efficiently any additional spectrum that it may acquire through the proposed auction.⁴

Grant of a waiver is also necessary to ensure that Sprint PCS is not placed at a competitive disadvantage as a result of any action that the Commission might take. Congress enacted the Omnibus Budget Reconciliation Act of 1993 in large part to ensure regulatory symmetry among CMRS providers.⁵ The Commission has noted that “even-handed regulation” is important to “ensure that competitors providing identical or similar services will participate in the marketplace under similar rules and regulations:”

Success in the marketplace thus should be driven by technological innovation, service quality, competition-based pricing decisions, and respon-

³ Although Sprint PCS is a new entrant carrier, having launched its first system less than four years ago, it has been growing faster than any other CMRS licensee. See News Release, “Sprint Announces Record Fourth Quarter, Yearly Results, www.sprintpcs.com/news/2000/00_02_01.html, at 1 (Feb. 1, 2000)(“The PCS Group continued its record-setting customer acquisition pace for the fifth consecutive quarter. During the [fourth] quarter, Sprint PCS became the first U.S. wireless carrier to add 1 million customers in one quarter.”). This record growth confirms that Sprint PCS provides a suite of services that the public finds of value.

⁴ Sprint PCS believes that the FCC does not have the discretion to deny it a waiver if the FCC grants a waiver to any other non-entrepreneur. See, e.g., *Green County Mobilephone v. FCC*, 765 F.2d 235 (D.C. Cir. 1985)(FCC commits reversible error in failing to grant a waiver to similarly situated person). See also *Northeast Cellular v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(FCC “must . . . articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation.”); *New York Telephone*, 13 FCC Rcd 8324, 8335 ¶ 22 (1998)(Waiver grant “must be based on articulated, reasonable standards that are predictable, workable, and not susceptible to discriminatory application.”). In other words, if the FCC grants anyone a waiver of Section 24.709(a), it must grant the same waiver to all other non-entrepreneurs interested in participating in the reauction.


⁵ See *Second CMRS Report*, 9 FCC Rcd 1411, 1418 ¶ 13 (1994)(“Congress saw the need for a new approach to the classification of mobile services to ensure that similar services would be subject to consistent regulatory classification. The Conference Report explains that the intent of Congress is that, “consistent with the public interest, similar services are accorded similar regulatory treatment.””).

siveness to consumer needs — and not by strategies in the regulatory arena.⁶

Clearly, “even-handed regulation” means that the Commission must permit all CMRS licensees to participate in the C/F block auction if it decides to grant a waiver to any one carrier. Sprint PCS accordingly requests that *if* the Commission grants a waiver to Nextel, SBC, or any other non-entrepreneur, it grant the identical relief to Sprint PCS.

Respectfully submitted

Sprint Spectrum L.P.
d/b/a SPRINT PCS

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February 22, 2000

⁶ *Id.* at 12420 ¶ 19.